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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,989	11/21/2003	Matthew Hayduk	034017R005	8138
441	7590	05/06/2005	EXAMINER	
SMITH, GAMBRELL & RUSSELL, LLP 1850 M STREET, N.W., SUITE 800 WASHINGTON, DC 20036			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/717,989	HAYDUK, MATTHEW
	<b>Examiner</b> Frederick C. Nicolas	<b>Art Unit</b> 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.  
 4a) Of the above claim(s) 1 and 29-41 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2,12,16-20 and 22-24 is/are rejected.  
 7) Claim(s) 3-11,13-15,21 and 25-28 is/are objected to.  
 8) Claim(s) 1-41 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/04;10/04/12/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group II, claims 1-28, in the reply filed on 2/11/2005 is acknowledged.
2. Claims 1, 29-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 2/11/2005.

***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claimed subject matter in claim 24, line 3, "side assembly".

***Claim Objections***

4. Claim 2 is objected to because of the following informalities: in claim 2, the claimed limitation "slide assembly" as recited in line 3, and "a slide assembly" as recited in line 4, are vague and unclear because it is not clear if the claimed limitation in line 4, "a slide assembly" is the same as the claimed limitation noted in line 3 above. Applicant should restructure the claimed language to prevent double inclusion throughout the claims. Appropriate correction is required.

5. Claim 22 is objected to because of the following informalities: in claim 22, the claimed limitation "a linear reciprocation drive force" as recited in line 4, and "a linear drive force" as recited in line 2, are vague and unclear because it is not clear if the

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claimed limitation in claim 2, line 2, "a linear drive force" is the same as the claimed limitation noted in claim 22 above. Applicant should restructure the claimed language to prevent double inclusion throughout the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 2,12,22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Dalton (GB2060784).

Dalton discloses a drive system as seen in Figure 1, which comprises a driver (2), means for converting a rotational drive force into a linear reciprocation drive force (page 1, lines 16-39), a mixing module rod (6) reciprocated by the drive system, the rotational drive has a rotation axis extending in a common direction with a rotation axis of a drive shaft (3) of the driver, a crank (4) and side assembly as seen in Figure 1, a transmission housing as seen in Figure 1. With regard to the preamble directed to "a foam dispenser system for a mixing module reciprocation rod", a preamble to a claim is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self contained description of the structure not depending for completeness upon the introductory clause. See *Kropa v. Robie, supra* at 480. See also *Ex parte Mott*, 190 USPQ 311, 313 (PTO Bd. of App. 1975). Clearly, the pending claim 22 does not rely on the preamble for completeness.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton (GB2060784) in view of Sperry et al. 5,964,378.

Dalton has taught all the features of the claimed invention except that the driver is a DC brushless motor. Sperry et al. teach the use of a DC brushless motor (col. 20, II. 54-67 onto col. 21, II. 1-9).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Dalton's motor to be a DC brushless motor as taught by Sperry et al. in (col. 20, II. 54-67 onto col. 21, II. 1-9), in order to maintain a constant flow rate ratio.

10. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton (GB2060784) in view of Koval et al. 5,441,173.

Dalton has taught all the features of the claimed invention except that a home sensor positioned in a drive transmission line. Koval et al. teach the use of a home sensor (198), which is positioned in a drive transmission line (col. 4, II. 28-50).

It would have been obvious to one having ordinary skill in the art at the time the invention was made provide the home sensor of Koval et al. onto drive transmission line of Dalton, in order to monitor the position of the pistons.

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton (GB2060784) in view of Koval et al. 5,441,173 as applied to claim 18 above, and further in view of Bezaire et al. 6,283,329.

Dalton-Koval et al. in combination have taught all the features of the claimed invention except that the driver includes an encoder. Bezaire et al. teach the use of a driver having an encoder (col. 14, ll. 63-67 onto col. 15, ll. 1-30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the encoder of Bezaire et al. onto the driver of Dalton and Koval et al., in order to provide position control, as taught by Bezaire et al. in (col. 14, ll. 63-67 onto col. 15, ll. 1-30).

12. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton (GB2060784).

Dalton has taught all the features of the claimed invention except that the driver includes a motor generating 10,000 lbf. of drive force.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have Dalton's motor generates 10,000 lbf. of drive force, because applicant has not disclosed that having a motor generates 10,000 lbf. of drive force provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would

have expected applicant's invention to perform equally well with Dalton's motor, because Dalton's motor operates the system.

Therefore, it would have been an obvious matter of design choice to modify Dalton's motor to obtain the invention specified in claim (20).

***Allowable Subject Matter***

13. Claims 3-11,13-15,21,25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Coccidiadiferro et al. 2005/0010323, and Huber et al. 5,219,097 disclose other types of foam dispenser.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
May 2, 2005



5/2/05

Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754